

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE L. KELLEY, et al.,)
)
Plaintiff,)
)
vs.) No. C07-475MJP
)
MICROSOFT CORPORATION,)
)
Defendant.)

DEPOSITION UPON ORAL EXAMINATION
OF
DIANNE L. KELLEY

Taken on November 2, 2007
1201 Third Avenue, Suite 2200
Seattle, Washington

REPORTED BY:
JOHANNA CHAPIN
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ORIGINAL

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<p>1 reporter.</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Just so you understand, uh-huh or uh-uh 4 aren't --</p> <p>5 A. Yeah, I know.</p> <p>6 Q. Okay. And do you know what versions of Vista are 7 on the two Acer computers that you purchased?</p> <p>8 A. Home Premium.</p> <p>9 Q. When did you purchase those computers?</p> <p>10 A. March.</p> <p>11 Q. Of 2007?</p> <p>12 A. Uh-huh.</p> <p>13 MR. THOMAS: Yes?</p> <p>14 A. Yes.</p> <p>15 Q. (By Mr. Rummage) All right. Well, we'll go back 16 and we'll talk a little bit more about this, but I wanted 17 to get that context.</p> <p>18 How did you get involved in this lawsuit?</p> <p>19 A. My sister called me and asked me if I had bought a 20 computer for some -- you know, something. She thought 21 maybe I had bought a computer and was asking me -- she said 22 that her husband had been working on something and if I had 23 or had not. I said, Well, I have, but I'm not sure of --</p> <p>24 if it has anything on it or not.</p> <p>25 Q. And you said her husband had been working on</p>	<p>Page 6</p> <p>1 A. But --</p> <p>2 Q. Go ahead. I keep thinking you're done, and I'm 3 leaping in. I apologize.</p> <p>4 A. But she said, I don't even know if you have -- you 5 know, in the computer, and I said I don't know either, 6 so...</p> <p>7 Q. Let's go back to the conversation with your 8 sister. She asked if you had bought a computer. Did she 9 tell you why she was asking that?</p> <p>10 A. No, she just said that he was working on 11 something.</p> <p>12 Q. Did she tell you what he was working on?</p> <p>13 A. No.</p> <p>14 Q. And did she ask you specifically whether there was 15 a sticker on the computer?</p> <p>16 A. She asked if there was but didn't say anything 17 about why or anything else.</p> <p>18 Q. Did she say anything about Windows Vista Capable?</p> <p>19 A. She said what the sticker had said.</p> <p>20 Q. Okay. So she asked you if there was a sticker 21 that said Windows Vista Capable on your computer?</p> <p>22 A. Yes.</p> <p>23 Q. And at that point you didn't know one way or the 24 other?</p> <p>25 A. No.</p>
<p>1 something?</p> <p>2 A. Yes.</p> <p>3 Q. Who is her husband?</p> <p>4 A. Dave Simmonds.</p> <p>5 Q. And is Dave Simmonds a lawyer?</p> <p>6 A. Yes.</p> <p>7 MR. THOMAS: That's Dave Simmonds right there.</p> <p>8 Q. (By Mr. Rummage) And at that point I assume you 9 were not represented by Mr. Simmonds or any other lawyer 10 with respect to these matters, correct?</p> <p>11 A. No.</p> <p>12 Q. At some point did you get in touch with a lawyer 13 or did a lawyer get in touch with you?</p> <p>14 A. I got in touch with someone.</p> <p>15 Q. Okay. Tell me how that happened.</p> <p>16 A. I hadn't thought much of -- you know, what -- she 17 had asked me if there was this sticker affixed, and I 18 hadn't thought much of it until I bought my other 19 computers.</p> <p>20 Q. Okay. So let's --</p> <p>21 A. So --</p> <p>22 Q. Oh, I'm sorry. Go ahead.</p> <p>23 A. So, you know, she said, you know, to call -- to 24 call to get information if I needed to.</p> <p>25 Q. Okay. So --</p>	<p>Page 7</p> <p>1 Q. And when was this call?</p> <p>2 A. I don't recall.</p> <p>3 Q. Was it prior to March of 2006 -- pardon me, March 4 of 2007?</p> <p>5 A. Yes.</p> <p>6 Q. And you purchased the computer roughly the 7 beginning of December 2006, correct?</p> <p>8 A. It was the day after Thanksgiving.</p> <p>9 Q. So late November of 2006; is that right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. You have to give her a yes or no.</p> <p>12 A. Yes.</p> <p>13 Q. There we go.</p> <p>14 A. Sorry.</p> <p>15 Q. So this conversation occurred somewhere between 16 the end of November 2006 and March of 2007; is that right?</p> <p>17 A. As best I can recall.</p> <p>18 Q. Do you recall about how long after you purchased 19 the computer this conversation occurred?</p> <p>20 A. No, I don't. In fact, I didn't put much -- I 21 just -- well, I don't know.</p> <p>22 Q. And when you say, "I don't know," you're referring 23 to the fact that you didn't know at that time, without 24 refreshing your recollection, whether there was a sticker 25 on the computer or not; is that correct?</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 A. At the time I talked to her, it didn't seem 2 relevant. It didn't seem like anything I needed to worry 3 about.</p> <p>4 Q. Okay. And that's -- I appreciate that 5 information, but the question I asked to you was not 6 whether it was relevant to you, but just whether, at that 7 moment when you were talking to her, you had a recollection 8 as to whether there was a sticker -- a Windows Vista 9 sticker on the computer or not.</p> <p>10 A. I may have, may have not. I don't recall.</p> <p>11 Q. Okay. So at some point after purchasing your 12 computers in March of 2007 you said you contacted a lawyer; 13 is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Whom did you contact?</p> <p>16 A. I first contacted David and asked him why it was 17 something -- or what, and he just gave me a name of Mike 18 Rosenberg, and I just called him. We played phone tag for 19 a little while.</p> <p>20 MR. THOMAS: I do want to caution you not to get 21 into what you spoke with the lawyers about.</p> <p>22 THE WITNESS: Okay.</p> <p>23 Q. (By Mr. Rummage) Yeah, that's a good point. 24 At some point did you retain or authorize lawyers 25 to act on your behalf?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Yes.</p> <p>2 Q. He was?</p> <p>3 A. He was calling -- we were communicating.</p> <p>4 Q. And you had already retained him as your lawyer at 5 the time you were trading voicemails?</p> <p>6 A. Oh, gosh, I don't know. I don't remember.</p> <p>7 Q. Well, I'll let Mr. Thomas do what he wants to do 8 with respect to this next question, but then I want to hear 9 about your first conversation with Mr. Rosenberger. What 10 did he say to you and what did you say to him?</p> <p>11 MR. THOMAS: And we will assert the 12 attorney/client privilege, and I instruct you not to answer 13 that question.</p> <p>14 A. I don't want to answer that question.</p> <p>15 Q. (By Mr. Rummage) Okay. Do you have a written 16 retainer agreement with your lawyers?</p> <p>17 A. I believe so.</p> <p>18 Q. Do you know when that's dated?</p> <p>19 A. No.</p> <p>20 Q. Was that something you signed at or about the time 21 of your first conversation with Mr. Rosenberger?</p> <p>22 A. I don't recall. I don't know. It's been a long 23 time.</p> <p>24 Q. Okay. You said that you exchanged some voicemails 25 with Mr. Rosenberger prior to the time you first talked to</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. When did that happen?</p> <p>3 A. I had used my new computers for a while, and I 4 went to look to see if, in fact, I did have the mark that 5 said it was capable of doing something, and then I went to 6 the Microsoft -- the place with the chart that tells 7 what -- what your system can do as far as Vista, if you 8 were to upgrade to Vista. You type in your computer's 9 information with the computer you're using to see what it's 10 capable of running and discovered that all I could get was 11 Windows Basic -- or the Vista Basic.</p> <p>12 Q. And when was that?</p> <p>13 A. It was after my new computers sometime.</p> <p>14 Q. Okay. Now, what I'm trying to find out when I 15 asked the question is when it was that you actually 16 authorized lawyers to act on your behalf, and I'll explain 17 why just so maybe we can act better on the question. Your 18 lawyer very correctly told you not to talk about the 19 content of your communications with your lawyers, and 20 that's absolutely right, but I need to know when they 21 became your lawyers so that I know when I have to stop 22 asking you questions.</p> <p>23 A. Gosh, I don't recall. I honestly don't recall.</p> <p>24 Q. Okay. Let me ask you this: When you first called 25 Mr. Rosenberger, was he your lawyer?</p>	<p style="text-align: right;">Page 13</p> <p>1 him; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what you said to him on your 4 voicemails?</p> <p>5 A. My name and phone number.</p> <p>6 Q. Can you tell me what he said to you on his 7 voicemails?</p> <p>8 MR. THOMAS: Again, the conversation is leading up 9 to the retention of privilege, and I want to instruct you 10 not to answer that on the ground of attorney/client 11 privilege.</p> <p>12 A. No answer.</p> <p>13 Q. (By Mr. Rummage) Okay. Did you talk to 14 Mr. Simmonds at all, other than the conversation that you 15 have already described where he referred you to 16 Mr. Rosenberger?</p> <p>17 A. No, not regarding this.</p> <p>18 Q. Okay. Did you and Mr. Simmonds, during that 19 conversation in which he referred you to Mr. Rosenberger, 20 have any discussion about why it was that that Windows 21 Vista Capable sticker was significant or meaningful?</p> <p>22 A. No. He provided a way to look and see what it was 23 capable of, and that's all.</p> <p>24 Q. And when you say, "he provided a way to look and 25 see what it was capable of, what was that?</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 A. I didn't know where to look. 2 Q. So you're talking about the website. 3 A. Uh-huh. 4 Q. Give her a yes or no if you could, please. 5 A. Yes. 6 Q. Okay. I'm sorry to keep doing that, but -- 7 A. No, I'm sorry. I keep forgetting to say. 8 Q. Now, I understand, Ms. Kelley, that you have been 9 proposed by your counsel as a class representative in this 10 case. Do you know what that means? 11 A. Yes. 12 Q. Okay. What does that mean to you? 13 A. It means that there are other people like me that 14 feel like they've been deceived. In fact, I'm sure of it. 15 And that's about it. And I'm representing them so that, 16 you know, they can at least get an operating system that 17 runs what they think they should have had. 18 Q. And when you said, "there are people like me," 19 what do you mean by that? 20 A. People that found out later what the -- what Vista 21 really is. 22 Q. And when you say people who found out later what 23 Vista really is, what do you mean by that? 24 A. Vista has a different appearance. It looks 25 different than XP.</p>	<p style="text-align: right;">Page 16</p> <p>1 people there would be. 2 Q. (By Mr. Rummage) That's not my question. My 3 question is, if somebody knew what they were getting and 4 they got it, are you trying to represent those people? 5 MR. THOMAS: Object to the form. Calls for a 6 legal conclusion. 7 You can answer. 8 A. I don't know. 9 Q. (By Mr. Rummage) Okay. Let me ask you also, have 10 you ever tried to use Windows Vista Basic? 11 A. No. 12 Q. So do you know what it looks like? 13 A. No, I don't. 14 Q. Do you know what functions it performs? 15 A. There were two listed on the list which were 16 security and something else that I can't recall. 17 Q. So you're talking about a list that had like 18 little boxes and checkmarks and things like that, right? 19 A. Yes. 20 Q. Okay. Now, you've talked a little bit about the 21 class that you hope to represent, and I want to know also 22 whether you have an understanding of what your duties and 23 responsibilities are in representing that group of people. 24 What are they? 25 A. Just to keep abreast of what's happening.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. And that was something that you weren't 2 aware of until later? 3 A. Not until I had my other computers. 4 Q. I see. So that was something you didn't know when 5 you purchased the Inspiron B130. 6 A. No. 7 Q. Okay. We're going to get into what you did know 8 and didn't know in a lot of detail later. I'm just trying 9 to get a lay of the land here. 10 And so are you trying to represent, also, people 11 who did understand what Vista was at the time they 12 purchased their computers? 13 MR. THOMAS: Object to the form. You can answer. 14 A. I feel anyone that felt they were deceived, as I 15 feel. 16 Q. (By Mr. Rummage) Okay. I take it from that, that 17 you're not trying to represent anyone who was not deceived 18 at the time they purchased their computer. 19 A. No. I feel that if people don't feel what they -- 20 that they got what they thought they should have, then, 21 yes, I would represent that. 22 Q. Okay. But not those people who did get what they 23 thought they should have, correct? 24 MR. THOMAS: Object to the form. You can answer. 25 A. I don't know if there's -- I'm not sure how many</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. And how do you do that? 2 A. Communication with my lawyers and, you know, that 3 sort of thing. 4 Q. Have you kept abreast of what's happening on the 5 case up until now? 6 A. Yes. 7 Q. Do you know what claims are being asserted on your 8 behalf in this case? 9 A. Yes. 10 Q. Which ones? 11 A. Consumer protection. I feel that they labeled it 12 incorrectly and it portrays something it wasn't. 13 Q. Okay. Is that it? 14 A. No. 15 Q. What else? 16 A. I think it's unfair for them to make any sort of 17 profit off of that sort of thing. 18 Q. Okay. Are you aware of any claims that have been 19 dropped in this lawsuit? 20 A. Yes. There's one that has been dropped, but I 21 can't recall what it's called. 22 Q. Okay. What have you read in connection with this 23 lawsuit? 24 A. I've read most of the papers that have come 25 through.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. And how many folks in your household use 2 computers? 3 A. Five. 4 Q. That would be you and who else? 5 A. My husband and I and my three children that are at 6 home. 7 Q. And what does your husband use the computer for? 8 A. Keeping track of our financial bills and bank 9 accounts. 10 Q. And do the kids use the computers? 11 A. Yes. 12 Q. What do the kids use the computers for? 13 A. E-mail, games once in a while, but that's pretty 14 much it. 15 Q. Okay. Now, you've given me kind of a picture of 16 generally who uses computers in your household. I'd like 17 to know who uses the Inspiron B130 that is the Dell 18 computer that we're talking about. 19 A. My oldest daughter. 20 Q. That was purchased to be her computer? 21 A. Yes. 22 Q. Okay. What does she use the computer for? 23 A. The computer was purchased for her for college, so 24 she uses it for homework and things surrounding her 25 college.</p>	<p style="text-align: right;">Page 24</p> <p>1 I do that, I want to talk about just in general your 2 background in buying computers and the like. 3 I take it this was not the first computer that you 4 purchased; is that right? 5 A. No. 6 Q. About how many computers before this one had you 7 purchased? 8 A. Gosh, I don't recall. Probably four. 9 Q. Okay. 10 A. I don't know. 11 Q. Well, I'm going to ask you as much as you can 12 remember about the purchase transactions of those just so I 13 understand what you do when you buy a computer. 14 So going back as far as you can in time, and I 15 realize you may not be able to remember every detail, but 16 what's the first computer that you remember buying? 17 A. Well, the first computer, I don't remember what it 18 was, but I was a single mother, and I was looking for 19 something that I could afford. 20 Q. And you don't remember what brand it was? 21 A. No, I don't remember. 22 Q. Do you remember roughly what you paid for it? 23 A. Probably \$500. 24 Q. And do you remember when that was? 25 A. Probably somewhere around 2000.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. And where is she in college? 2 A. This is her first -- oh, where is she in college? 3 Q. Yes. 4 A. Skagit Valley College. 5 Q. Does she live at home? 6 A. Yes. 7 Q. Does she do any advanced gaming on the computer? 8 A. She has one she plays. 9 Q. What game is that? 10 A. World of Warcraft. 11 Q. Did she play any role in the purchase of that 12 computer, deciding what computer to purchase? 13 A. Yes. 14 Q. What role did she play? 15 A. How much memory she wanted. 16 Q. Okay. Did your husband play any role in the 17 purchase decision? 18 A. He helped find a price, you know, a good price. 19 Q. When you say, "he helped find a good price," what 20 did he do? 21 A. Well, we were all looking but decided that the day 22 after Thanksgiving would be a good time to buy just because 23 you can find some really good deals. 24 Q. Okay. Now, I'm going to come back to that 25 transaction and go through it really in detail, but before</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. So seven years ago or something like that? 2 A. Yeah. That was -- that's the last one I 3 remember -- that I remember purchasing. 4 Q. That's the last one that you remember? 5 A. The last one before the two I just bought. But I 6 know that I bought more than that before -- or one before 7 that. I don't know -- 8 Q. Okay. 9 A. -- honestly. 10 Q. Well, let me ask you this: Let's focus on 11 whatever it was that you bought around 2000 when you were a 12 single mom that you paid something like \$500 for, and I 13 realize those are all approximations. 14 A. Yes. 15 Q. What did you use that computer for? 16 A. E-mail. 17 Q. Anything else? 18 A. Searching for information, homework for kids. 19 Q. Anything else? 20 A. No more than I can recall. 21 Q. Okay. Do you recall what basic applications you 22 used, what programs or software? 23 A. Outlook for mail program. No, I can't -- I can't 24 recall what was on it. 25 Q. Did you use Word or Wordpad or Word Perfect or any</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 30</p> <p>1 remember about the computer you had before that? Do you 2 remember anything? 3 A. Windows '98, and that's it. 4 Q. Okay. And would your use of the computer have 5 been roughly the same prior to the computer that you 6 purchased before the Inspiron? 7 A. Yeah. Yes. 8 Q. Okay. And I believe you told me that you 9 purchased that in a store, the last computer that you 10 recall. 11 A. Yes. 12 Q. And you believe it was probably an Office Depot, 13 correct? 14 A. Probably. 15 Q. Did you shop before you bought it, in other words, 16 go to other places and look at other computers? 17 A. Oh, yes. 18 Q. What did you do to shop, do you remember? 19 A. Looked at the different memory sizes, looked at 20 different -- different features back and forth until I 21 figured out what I wanted. 22 Q. All right. Did you visit more than one retailer? 23 A. Yes. 24 Q. Do you remember who you visited other than Office 25 Depot?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. What happened that caused you to reboot? 2 A. I don't know. The screen went black, and I had to 3 redo it. 4 Q. And that only happened to you once? 5 A. Yeah, thank goodness. 6 Q. Did you ever have any problems with anyone hacking 7 into your system or getting into your Internet or e-mail 8 accounts? 9 A. Not that I'm aware of. 10 Q. Okay. Did you ever have any issue with parental 11 controls, that is, your kids getting on the computer and 12 going someplace that they shouldn't? 13 A. I never allowed them on without supervision, so, 14 no. 15 Q. By the way, how old are your kids now? You have 16 one in college. 17 A. I have four children. 18 Q. Right. 19 A. One is out of the house, and the three that are 20 there are 13, 15 and 20. 21 Q. And the 20-year-old is at Skagit Valley? 22 A. Yes. 23 Q. And that's the daughter for whom this Dell was 24 purchased? 25 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Office Max, probably Costco, but I don't recall 2 anything else. I mean, I don't recall every place I went. 3 Q. Understood. 4 Did you do any online shopping? 5 A. No. 6 Q. So that would -- that computer you shopped purely 7 through what we think of as bricks and mortar retailers. 8 A. Yes. 9 Q. Okay. Aside from visiting retailers and looking 10 at computers, did you do any other investigation when you 11 were purchasing that computer, like reading magazine 12 articles, online reviews, anything of that nature? 13 A. No. 14 Q. So it's strictly visiting the stores? 15 A. Yes. 16 Q. Did you talk to salespeople when you visited the 17 stores? 18 A. Yes. 19 Q. Did you ask questions? 20 A. Oh, yes. 21 Q. Now, prior to the time that you purchased the Dell 22 Inspiron, did you ever have any difficulty with any of your 23 computers with viruses? 24 A. Maybe a time or two. I had one I had to reboot 25 one time.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And does she remain the principal user of that? 2 A. Yes. 3 Q. Did she, by the way, contribute financially toward 4 the purchase of that computer? 5 A. Initially, I bought it. She's been paying me 6 back. 7 Q. Okay. Now, I want to get into that purchase in as 8 much detail as you and I can tease out of it, and first of 9 all I want to discuss the process by which you bought the 10 computer. And you mentioned to me earlier that before you 11 bought your previous computer, you did some shopping. Did 12 you do any shopping before you bought the Dell? 13 A. Well, for -- I was basically looking for large 14 amounts of memory and something that was, you know, state 15 of the art, that would last her through college. 16 Q. Okay. My question was not what you were looking 17 for. My question was whether you did a lot of shopping 18 before you bought it. Did you? 19 A. No, not a lot of shopping. 20 Q. Okay. Did you visit any retailers before you 21 purchased it? 22 A. Yes. 23 Q. Which retailers did you visit? 24 A. Best Buy, Costco, Office Depot. And this was 25 over, you know, quite a period of time.</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 Q. Over about how long a period of time? 2 A. I would say a year. 3 Q. So you began shopping for this back in 2005? 4 A. Pretty much, yes. 5 Q. Was it a continuous process of shopping, or did 6 you kind of dip in and take a look and then... 7 A. Dip in, take a look. 8 Q. Okay. And in addition to visiting those 9 retailers, did you visit any online sites? 10 A. Yeah, we were looking for some things off and on. 11 Q. Who did you visit online, which companies? 12 A. I can't remember. There was a lot. I don't know. 13 Just looking, looking around. 14 Q. Well, we know you visited Dell, right? 15 A. Yeah. 16 Q. Did you go to the Gateway site? 17 A. Briefly. 18 Q. Did you look at the Acer site? 19 A. No. 20 Q. How about Lenovo? 21 A. No. 22 Q. Sony? 23 A. No. 24 Q. So you remember Gateway and you remember Dell, but 25 you're not sure of anything else?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. Anything else that you thought she might 2 need for college? 3 A. Not that I recall. 4 Q. Did she make any particular request to you for 5 particular applications or features of the computer? 6 A. Just memory. 7 Q. Do you remember being concerned as to whether the 8 computer would be able to run any Adobe applications? 9 A. I don't recall it being a concern. 10 Q. Did you have any thoughts as to whether you wanted 11 a laptop or desktop? 12 A. Laptop. 13 Q. Why was that? 14 A. Portable, so she could use it anywhere she went. 15 Q. And you said she wanted lots of memory. Did you 16 have an understanding as to what that meant? 17 A. It just means that it would run faster possibly. 18 Q. Anything else? 19 A. I don't know what else it would help. 20 Q. How about processing speed generally? Was that 21 something that she talked to you about? 22 A. No. She didn't have a specification. 23 Q. Do you remember having any discussions about video 24 cards? 25 A. No.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. No, not sure of anything else. 2 Q. And you said a moment ago that basically what you 3 were looking for was a large amount of memory and 4 something -- I believe you called it state of the art; is 5 that right? 6 A. Well, yeah, something that she could take to 7 school and have last, you know, through her school. 8 Q. Did you have any price limitations or 9 considerations? 10 A. Somewhere under a thousand dollars. 11 Q. Were there any particular applications that you 12 wanted the computer to be able to run? 13 A. I wanted it to have current e-mail and whatever 14 would come on a current computer. 15 Q. Okay. I understand that. 16 Are there any particular applications, other than 17 current e-mail, that you can think of, as you sit here 18 today, that you wanted to be on the computer? 19 A. No. 20 Q. Now, I believe you told me that it was principally 21 going to be for your daughter to use in college, correct? 22 A. Yes. 23 Q. And so you obviously wanted it to have a word 24 processing program, right? 25 A. Well, yeah.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Okay. Did she indicate to you that any particular 2 video features or components were important to her? 3 A. No, not really. 4 Q. Now, we have talked a little bit about where you 5 visited in terms of bricks and mortar stores and the sites 6 that you went to. Did you read any literature or 7 information to give you background on what you were 8 shopping for? 9 A. I'm -- you know, I'm not a computer whiz. I don't 10 know a lot about how much RAM does what. I don't know a 11 lot about the different stuff. All I can do is take what 12 information they have and make the best choice that I 13 think. 14 Q. I understand that. 15 Let me ask the question a different way. Did you 16 ever go to any online sites that evaluate or review 17 laptops? 18 A. No. 19 Q. Do you know if your husband did? 20 A. I don't think so. 21 Q. Did you ever look at any magazines that review or 22 evaluate laptops, like PC World or something like that? 23 A. No. Because, honestly, I don't know enough about 24 it to make -- any more than memory, you know, something has 25 a lot of memory or -- you know, I know something about</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 computers but not enough to know the difference between a 2 lot of different things. 3 Q. Okay. Did you take a look at any newspaper 4 articles that you can recall that discussed laptops or gave 5 buying guides to people like yourself? 6 A. Not that I recall. 7 Q. Well, at some point in this process, did you come 8 across the term "Windows Vista Capable"? 9 A. No. I was just -- I was looking at Dell's ad, and 10 it seemed like an awfully good deal. And it was the day 11 after Thanksgiving. It was just a very tight little window 12 of time, a few hours, they had the price dropped to \$499, 13 and after that period of time, I think it was three or four 14 o'clock in the afternoon, it was right back up to \$699, and 15 that was the sale price. So I was feeling like I was 16 getting a state-of-the-art computer for a really good deal 17 because it was the day after Thanksgiving, and that was the 18 only reason. 19 Q. Okay. Now, I want to go back and go through some 20 of what you just said and try to understand a little bit 21 better. 22 You said something about a Dell ad; is that right? 23 A. Yes. 24 Q. What are you referring when you say that? 25 A. It's a Dell computer.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. All right. And so when it came up -- I assume in 2 a list of search results; is that right? 3 A. Yes. 4 Q. After Dell came up in the list of search results, 5 did you then go to the Dell site? 6 A. Yes. 7 Q. Okay. Tell me what happened after you went to the 8 Dell site. 9 A. I looked at the specifications. It looked good. 10 Q. What looked good about it? 11 A. The memory was one gigabyte, which she was looking 12 for, and just the whole list of things looked inviting. 13 Q. When you say the "whole list of things looked 14 inviting," what was on the list of things that looked 15 inviting to you, if you can remember? 16 A. I can't remember. 17 Q. Did the price play any role in what looked 18 inviting? 19 A. It -- it helped, but I wouldn't have looked at it 20 if it didn't have the right other specifications. 21 Q. And, again, to get back to what we talked about 22 before, the other right specifications included memory; is 23 that right? 24 A. Yes. 25 Q. And you said it had one gig, which is what she</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Let me ask the question a different way. Was that 2 a newspaper ad? 3 A. Internet ad. 4 Q. And where did you see the Internet ad? 5 A. On the Internet. 6 Q. Well, but did you visit the Dell site or did it 7 pop up on a different site? 8 A. Actually, I was combing the Internet for Black 9 Friday sales, because that's typically a day that there are 10 really good sales on a lot of things. 11 Q. Black Friday being the Friday after Thanksgiving? 12 A. Yes. 13 Q. And how did you come across the Dell ad while you 14 were combing the Internet for Black Friday sales? 15 A. It came up in the listing of things that came up 16 for that search. 17 Q. I see. So you did a search looking for sales? 18 A. Yes. 19 Q. And you weren't specifically looking for sales on 20 computers? 21 A. Yes. 22 Q. Oh, you were? 23 A. But Dell came up -- 24 Q. Got it. 25 A. -- under the computers under Black Friday.</p>	<p style="text-align: right;">Page 41</p> <p>1 wanted, which I understand is the RAM on it, correct, the 2 random access memory that -- 3 A. (Witness nods head.) 4 Q. Okay. Do you know how big the hard drive was? 5 A. No. 6 Q. Was that a factor in your decision? 7 A. When comparing and I had things to compare with 8 side by side, yes. 9 Q. Were you comparing things side by side that 10 morning? 11 A. Yeah. I was looking from what we had been looking 12 at previously to that. 13 Q. And what had you been looking at previously? 14 A. Memory and whatever 256, 512-something -- it's 15 1 gigabyte in this one, so -- and the other specifications 16 I have no idea. 17 Q. Okay. Does that mean that at the time those other 18 specifications weren't things that you were focusing on? 19 A. At the time, not a lot. 20 Q. Now, a few minutes ago I asked you the question of 21 whether during your shopping you came across the term 22 "Windows Vista Capable." Do you remember my asking that 23 question? 24 A. Yes. 25 Q. And I believe you said that you didn't think you</p>

<p style="text-align: right;">Page 42</p> <p>1 did; is that right?</p> <p>2 A. Yes. I don't think I did.</p> <p>3 Q. When you purchased the Dell Inspiron that Friday</p> <p>4 after Thanksgiving, were you aware that it was labeled a</p> <p>5 Windows Vista Capable PC?</p> <p>6 A. I had no idea what Vista was.</p> <p>7 Q. So the answer to that is that you were not aware</p> <p>8 it was labeled Windows Vista Capable?</p> <p>9 A. I was not aware of anything involving Vista</p> <p>10 because Vista had not been released. I didn't know</p> <p>11 anything about it.</p> <p>12 Q. So would it be fair to say that you weren't</p> <p>13 relying on a Windows Vista Capable designation when you</p> <p>14 made the decision to buy the computer?</p> <p>15 A. Not at that time.</p> <p>16 Q. Did you look at any other PCs that morning -- you</p> <p>17 know, actually, I keep saying "that morning." Was it in</p> <p>18 the morning? I visualize you waking up on Friday morning</p> <p>19 and looking for the sales, but I don't know that it was in</p> <p>20 the morning?</p> <p>21 A. Gosh, probably, but I don't recall what.</p> <p>22 Q. Okay. I'll say "that day" instead.</p> <p>23 Were you looking at other laptops that day as</p> <p>24 well?</p> <p>25 A. Yes, but nothing had as much stuff on it as this</p>	<p style="text-align: right;">Page 44</p> <p>1 Dell website that day that was as inexpensive as the one</p> <p>2 you purchased?</p> <p>3 A. I think there were some that might have been less.</p> <p>4 Q. Do you recall giving any consideration to</p> <p>5 purchasing them?</p> <p>6 A. No, because they didn't fit the description of</p> <p>7 what we were looking for.</p> <p>8 Q. Do you remember -- well, back up. Strike that.</p> <p>9 I gather, because you looked at other models on</p> <p>10 the Dell website, that you did do some navigating around</p> <p>11 the site; is that correct?</p> <p>12 A. Some, yes.</p> <p>13 Q. Do you remember whether you navigated through any</p> <p>14 pages that talked about Windows Vista or Windows Vista</p> <p>15 Capable computers?</p> <p>16 A. I don't remember. I don't recall.</p> <p>17 Q. Let me ask you this: When is the first time you</p> <p>18 remember hearing the term "Windows Vista Capable"?</p> <p>19 A. When I got my new computers.</p> <p>20 Q. Okay. Those would be the Acer computers?</p> <p>21 A. Yes.</p> <p>22 Q. And I'm going to hold off on that because I want</p> <p>23 to talk about those transactions separately, so I'm not</p> <p>24 going to go -- but that's the first time you heard it?</p> <p>25 A. That's the first time I ever saw or realized what</p>
<p style="text-align: right;">Page 43</p> <p>1 laptop.</p> <p>2 Q. And when you say "stuff," again, we're talking</p> <p>3 about the same things you and I have already discussed; is</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember what other laptops those were that</p> <p>7 you looked at that day?</p> <p>8 A. No, except that we did look at -- I did look at a</p> <p>9 Macintosh.</p> <p>10 Q. Do you remember anything about the Macintosh you</p> <p>11 looked at?</p> <p>12 A. Nothing.</p> <p>13 Q. Do you remember whether it was more or less</p> <p>14 expensive?</p> <p>15 A. For what it was, no. I don't remember if it was</p> <p>16 more or less or what.</p> <p>17 Q. Do you remember whether you looked at other models</p> <p>18 on the Dell website?</p> <p>19 A. Yes.</p> <p>20 Q. What other models did you look at?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you recall whether the other models you looked</p> <p>23 at were more or less expensive than the one you purchased?</p> <p>24 A. On that particular day, they were more.</p> <p>25 Q. Do you recall whether you saw any laptop on the</p>	<p style="text-align: right;">Page 45</p> <p>1 Vista was.</p> <p>2 Q. And that would have been in March of '07?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What was the operating system on the Dell</p> <p>5 PC that you purchased?</p> <p>6 A. XP.</p> <p>7 Q. Do you remember what edition?</p> <p>8 A. No.</p> <p>9 Q. Do you know what applications, programs, whatever,</p> <p>10 your daughter was using on the Dell laptop?</p> <p>11 A. The word processing, and that's mainly -- and the</p> <p>12 Internet, you know, Internet Explorer.</p> <p>13 Q. Has she complained to you about any problems that</p> <p>14 she has running those applications on the Dell?</p> <p>15 A. No.</p> <p>16 Q. Has she expressed any concerns about any</p> <p>17 applications that she wishes she could run that she can't?</p> <p>18 A. Well, until I got my computer, no.</p> <p>19 Q. I infer from what you say that she is jealous of</p> <p>20 the features on your computer; is that right?</p> <p>21 A. She would like to have some of the features that</p> <p>22 are on...</p> <p>23 Q. What are those?</p> <p>24 A. Well, the Vista Premium that has the pages that</p> <p>25 line up in rolodex. You can roll the pages and pick one</p>

<p>1 out.</p> <p>2 Q. Anything else?</p> <p>3 A. The transparency of the Windows.</p> <p>4 Q. Anything else?</p> <p>5 A. Some of the 3-D effects. And that's all I can</p> <p>6 think of right now.</p> <p>7 Q. And those, by the way, just so I understand again,</p> <p>8 that the two Acer's that you purchased, they are both</p> <p>9 desktops, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Now, since you purchased the Dell laptop, are</p> <p>12 there any applications that you added to it that weren't</p> <p>13 preloaded?</p> <p>14 A. You mean like updates?</p> <p>15 Q. Programs.</p> <p>16 A. What did I add? Office Professional.</p> <p>17 Q. So you purchased that separately?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Is that a yes?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. Sorry.</p> <p>23 Q. And does the Dell run Office Professional?</p> <p>24 A. I have not put it on the Dell.</p> <p>25 Q. Oh, I'm sorry. You and I misunderstood each</p>	<p>Page 46</p> <p>1 Q. Had you ever looked into it until you looked at</p> <p>2 the chart? In other words --</p> <p>3 A. No.</p> <p>4 Q. Okay. So that was the first time you ever gave it</p> <p>5 thought?</p> <p>6 A. First time.</p> <p>7 Q. And that was after you were contacted by your</p> <p>8 sister, correct?</p> <p>9 A. That was after I got my new computers.</p> <p>10 Q. I see. Okay. Let me go back, because I may have</p> <p>11 now lost the sequence of events.</p> <p>12 Your sister called you before you got the new</p> <p>13 computers, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And then you didn't follow through until after you</p> <p>16 got the new computers?</p> <p>17 A. Yes.</p> <p>18 Q. And when you bought the new computers, did Windows</p> <p>19 Vista Premium come preloaded on them?</p> <p>20 A. Yes.</p> <p>21 Q. And so prior to that time, you didn't look into</p> <p>22 the possibility of upgrading the Dell to Windows Vista?</p> <p>23 A. No.</p> <p>24 Q. So after you went to that site and you looked at</p> <p>25 the little chart, did you ask any questions or inquire</p>
<p>Page 47</p> <p>1 other. I was asking whether you purchased any programs or</p> <p>2 applications for the Dell.</p> <p>3 A. No.</p> <p>4 Q. No. So your daughter's computer is running just</p> <p>5 with the programs that came preloaded on it?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How often, by the way, do you use the Dell?</p> <p>8 A. Rarely.</p> <p>9 Q. Under what circumstances do you use it?</p> <p>10 A. When she's asking me to look at something, but</p> <p>11 other than that, on my own, no.</p> <p>12 Q. Do you know what version of Internet Explorer the</p> <p>13 Dell is running?</p> <p>14 A. No.</p> <p>15 Q. Do you know whether your daughter has downloaded</p> <p>16 an updated version of Internet Explorer?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you make any effort to upgrade the Dell to</p> <p>19 Windows Vista?</p> <p>20 A. I didn't attempt it because it was simply the</p> <p>21 basic.</p> <p>22 Q. And by the way, you told me that at some point you</p> <p>23 looked into that, you looked into some chart; is that</p> <p>24 right?</p> <p>25 A. Yes.</p>	<p>Page 49</p> <p>1 further about upgrading the computer to Windows Vista Home</p> <p>2 Basic?</p> <p>3 A. No.</p> <p>4 Q. So you just looked at the chart, and that was the</p> <p>5 end of it?</p> <p>6 A. That was the end of it.</p> <p>7 Q. And before we move to the Acer purchase, I want to</p> <p>8 make sure I understand one other thing about this time</p> <p>9 frame.</p> <p>10 You mentioned that when your sister called you she</p> <p>11 asked you whether your computer had a sticker on it,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And at that moment in time you weren't sure one</p> <p>15 way or the other, correct?</p> <p>16 A. I had no idea what Vista was.</p> <p>17 Q. Did you go and look after your sister called?</p> <p>18 A. It wasn't important to me because I didn't really</p> <p>19 care --</p> <p>20 Q. So you didn't go look?</p> <p>21 A. -- at that point.</p> <p>22 Q. I'm sorry.</p> <p>23 A. No.</p> <p>24 Q. So you didn't go look?</p> <p>25 A. I went and looked, and it said -- but I just sort</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 of -- you know, I didn't have time to look into it. I 2 didn't -- you know, I just didn't want to at the time. 3 Q. Did you talk to your daughter about it after your 4 sister called? 5 A. I just told her I wanted to look at it. 6 Q. Did she ask you why? 7 A. Yeah. And I just said I want to look at it, so 8 she let me look at it, and I said okay. 9 Q. No further dialog about what the sticker was? 10 A. No, because I wasn't telling her what I was 11 looking at. 12 Q. Do you know whether you had seen the sticker 13 before you did that? 14 A. I hadn't really noticed it, no. 15 Q. Did you look at it -- when was the next time you 16 looked at the sticker? 17 A. I got my new computers. 18 Q. So, again, after March of 2007? 19 A. Uh-huh. I started looking at what my Vista Home 20 Premium could do and then looking to the charts and finding 21 that, of the charts, there was all these things listed that 22 my Acer can do, but when I went with this computer and 23 hooked it in and went to look, there were two little 24 checkmarks, one on securities and one on something else. 25 Q. All right. Now, I want to go back and talk in</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Burlington. 2 Q. Did you see any retail displays concerning Windows 3 Vista when you went into Best Buy? 4 A. Yes. 5 Q. What do you recall seeing? 6 A. All of the computers that were loaded with Vista. 7 Q. Did you see any charts about the various editions 8 of Windows Vista similar to the chart that you eventually 9 saw when you -- 10 A. No. 11 Q. You've got to let me finish the question so she 12 can get it. 13 -- similar to the chart that you saw when you went 14 to the Internet later? 15 A. Not that I recall. 16 Q. What kinds of literature or promotional materials 17 do you recall seeing at Best Buy concerning Vista? 18 A. Screens with Vista on them. 19 Q. Meaning running Vista? 20 A. Yes. 21 Q. I see. 22 Now, when you say that you wanted something 23 comparable to what you had, tell me what that meant to you. 24 A. I wanted something that would at least run as 25 efficiently as my last one, if not better.</p>
<p style="text-align: right;">Page 51</p> <p>1 greater detail about your purchase of the Acer's. What 2 prompted you to look for the Acer computers? 3 A. My computer crapped out. 4 Q. That's a good reason. 5 And when you say your computer crapped out, what 6 did it do? 7 A. It caught my monitor on fire; not only one but two 8 monitors on fire. 9 Q. Simultaneously or consecutively? 10 A. No, different times. 11 Q. All right. And when did that happen? 12 A. Oh, gosh, I would say probably a couple of weeks 13 before we bought the new ones. 14 Q. Did you not use the offending computer while you 15 shopped for the new ones? 16 A. I quit. After the second monitor, I quit. 17 Q. So what did you do to shop for the Acer? 18 A. Just wanted something comparable to what I had 19 with enough memory that it wasn't going to go slow. Or 20 processing speed. I don't know. I told the store guy what 21 I was looking for, and he pointed me in the right 22 direction. 23 Q. What store did you go to? 24 A. Best Buy. 25 Q. Which Best Buy?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Did you go shopping with the intention that you 2 would buy a computer with Windows Vista on it? 3 A. I didn't have any intention except to get a 4 computer to replace my other. 5 Q. So Windows Vista was not on the top of your mind 6 when you went shopping? 7 A. It was not on the top of my mind, no. 8 Q. And when you began shopping, did you -- had you 9 already made up your mind that you wanted to make sure to 10 get Home Premium instead of Home Basic? 11 A. There was nothing there loaded with Basic. 12 Q. My question was whether when you started shopping, 13 whether you distinguished in your mind between Home Basic 14 and Home Premium. 15 A. I didn't know much about Vista in the first place. 16 Q. So the answer is, no, you didn't distinguish? 17 A. No. 18 Q. Do you know which model of the Acer you purchased? 19 A. Not -- no, not at this point. 20 Q. Do you remember how much you paid? 21 A. Approximately \$600. 22 Q. And did you buy the two Acer's simultaneously? 23 A. Yes. 24 Q. So \$600 was each, correct? 25 A. Yes.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. And who uses the two Acers?</p> <p>2 A. My husband and I, and sometimes my 13- and</p> <p>3 15-year-old.</p> <p>4 Q. And I remember we talked at some length about what</p> <p>5 it was you used the predecessor computer for, that is, you</p> <p>6 used it for e-mail, searching for information on the</p> <p>7 Internet, homework for kids, some graphics for cards,</p> <p>8 letterhead, things like that. Do you use these Acers for</p> <p>9 anything different?</p> <p>10 A. Mine I use for making labels. I make handmade</p> <p>11 soap, and so I put labels on my soap.</p> <p>12 Q. What program do you use to make the labels for the</p> <p>13 handmade soap?</p> <p>14 A. Publisher.</p> <p>15 Q. Is that something that ran on your prior computer</p> <p>16 as well.</p> <p>17 A. Yes.</p> <p>18 Q. Are there any programs or applications that you</p> <p>19 use on the two new Acers that you didn't use on your prior</p> <p>20 computer?</p> <p>21 A. Yes.</p> <p>22 Q. What?</p> <p>23 A. Microsoft Office Professional.</p> <p>24 Q. Did that come preloaded on the Acer?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 56</p> <p>1 Did you on any of the computers you ever had do an</p> <p>2 upgrade of the operating system?</p> <p>3 A. I don't believe so, but I didn't think there was</p> <p>4 anything -- there was nothing to upgrade to.</p> <p>5 Q. Okay. Do you recall, when you purchased the Dell</p> <p>6 computer, whether you got a coupon for an Express Upgrade?</p> <p>7 A. No, I don't recall anything like that.</p> <p>8 Q. All right. Now, let me show you some of the</p> <p>9 documents relating to this.</p> <p>10 MR. THOMAS: Do you have sequential from the other</p> <p>11 depositions or are we just going to --</p> <p>12 MR. RUMMAGE: Let's just start with 1.</p> <p>13 MS. NORMAN: I love the sequential thing, but you</p> <p>14 have to --</p> <p>15 MR. THOMAS: You have to know.</p> <p>16 MR. RUMMAGE: And I'm not sure -- we didn't use</p> <p>17 the same court reporting service, did we? Yeah, that would</p> <p>18 be an issue.</p> <p>19 MR. THOMAS: Start with 1.</p> <p>20 MR. RUMMAGE: Start with 1.</p> <p>21 (Exhibit No. 1 was marked.)</p> <p>22 Q. (By Mr. Rummage) This is a document, Ms. Kelley,</p> <p>23 that was produced to us by your lawyers as coming from your</p> <p>24 records. Do you recognize it?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. So you bought that separately?</p> <p>2 A. Yes.</p> <p>3 Q. And Microsoft Office Professional has lots of</p> <p>4 stuff on it.</p> <p>5 A. Yes.</p> <p>6 Q. What in particular do you use?</p> <p>7 A. Excel, Access, the Publisher.</p> <p>8 Q. Is Microsoft Publisher a part of Office</p> <p>9 Professional?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. Accounting. It seems to me like Outlook is a part</p> <p>13 of that too.</p> <p>14 MR. RUMMAGE: I'm about to shift gears in a</p> <p>15 meaningful way, so I would just as soon take a five-minute</p> <p>16 break, if you wouldn't mind, so I can talk to Linda about</p> <p>17 something.</p> <p>18 MR. THOMAS: That would be great.</p> <p>19 (A brief break was taken.)</p> <p>20 Q. (By Mr. Rummage) Ms. Kelley, I just have, oh,</p> <p>21 probably 30 minutes or so, and I think we'll be done. And</p> <p>22 before I show you some documents, I have some follow-up</p> <p>23 questions on things I asked you before. And I may have</p> <p>24 asked this but I'm not 100 percent sure, and I want to make</p> <p>25 sure I cover it.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. What is it?</p> <p>2 A. It's my receipt.</p> <p>3 Q. All right. I just have a few questions about some</p> <p>4 of the items here just so I fully understood them.</p> <p>5 About a third of the way down it says "Payment</p> <p>6 Information." There's a box, and it says "Billing Contact:</p> <p>7 Dianne Kelley," and it gives a phone number and address.</p> <p>8 And it says "Payment Method: Dell Preferred Account</p> <p>9 Existing."</p> <p>10 Did you buy for this -- pardon me. Did you pay</p> <p>11 for this through Dell?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have an existing account with them, or did</p> <p>14 you set up a new one?</p> <p>15 A. I set up one when I purchased this.</p> <p>16 Q. All right. And did you do all of that on line?</p> <p>17 A. Yes.</p> <p>18 Q. At the time you purchased the computer?</p> <p>19 A. Yes.</p> <p>20 Q. Is there still money owing on that computer?</p> <p>21 A. No.</p> <p>22 Q. Do you know when you paid it off?</p> <p>23 A. No, I don't recall.</p> <p>24 Q. And I assume, based on our prior conversation,</p> <p>25 that you were making the payments on that rather than your</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 62</p> <p>1 of '06. And that would have been roughly a week before you 2 purchased your computer; is that right? 3 A. 11 what? 4 Q. 17. 5 A. Roughly. 6 Q. Okay. Do you remember if you saw this page or 7 something that looked like this at the time that you were 8 shopping on the Dell website? 9 A. I don't recall this page, no. 10 Q. And just to confirm -- actually, to phrase it a 11 different way, leaving aside whether you saw this page 12 exactly, do you remember seeing a page that was labeled as 13 this one is, Windows Vista Capable? 14 A. No, I don't remember anything about Vista. 15 Q. And that would include you don't remember seeing 16 any web pages on the Dell website about Vista? 17 A. Not really, not that I can recall anyway. 18 Q. Did you, during this time frame, visit the 19 Microsoft website at all? 20 A. No. 21 Q. And when I say -- just to be precise, when I say 22 "during that time frame," what I was referring to is the 23 time frame when you were shopping for the Dell computer. 24 Did you understand my question that way? 25 A. I didn't look at too much of anything except once</p>	<p style="text-align: right;">Page 64</p> <p>1 authenticate these photographs, Ms. Kelley, and that means 2 so that later on we can determine that these really are 3 what we say they are. If you could put Exhibit 4 in front 4 of you. Exhibit 4 is something I believe is a picture of 5 your laptop as it's standing open; is that right? 6 A. Yes. 7 Q. Okay. And Exhibit 5 should be a photograph -- a 8 close-up of the two stickers that are in the lower 9 right-hand corner; is that correct? 10 A. Yes. 11 Q. And earlier on you gave some testimony about a 12 call from your sister about a Windows Vista Capable 13 sticker. Do you recall that testimony? 14 A. Yes. 15 Q. And is this the sticker that you went and looked 16 at? 17 A. Yes. 18 Q. And you had not looked at that prior to that call 19 if I'm correct, correct? 20 A. I had no knowledge of Vista. 21 Q. All right. And what about the sticker on the 22 left, the Intel sticker? Do you see that? 23 A. It means nothing to me. 24 Q. So that didn't play any role in your purchase of 25 this computer?</p>
<p style="text-align: right;">Page 63</p> <p>1 In a while in a store, once in a while on line. So, no. 2 Q. No, you didn't visit the Microsoft website? 3 A. No. 4 Q. Okay. Do you remember whether you looked at 5 Consumer Reports during that time frame? 6 A. No. 7 Q. Now, I'm going to tell you that Consumer Reports 8 describes the model that you purchased as a "rudimentary 9 laptop or a second PC." "Great choice for a rudimentary 10 laptop or a second PC." Does that characterize what you 11 thought you were buying? 12 A. Pretty much. It was something for her to take to 13 college. 14 Q. I don't believe I have any further questions. Oh, 15 I take it back. I do have. I just want to authenticate 16 these, and I don't know how best to go about this, but you 17 recall earlier, before we started on this deposition, 18 Ms. Kelley, that we took some photographs of your computer, 19 and I'm going to ask the court reporter -- I don't know how 20 you want to mark these, but we're going to authenticate 21 these and attach them to the dep, if that's all right. And 22 I don't care what order you do these. 23 (Off-the-record discussion.) 24 (Exhibit Nos. 4-7 were marked.) 25 Q. (By Mr. Rummage) Now, let me just essentially</p>	<p style="text-align: right;">Page 65</p> <p>1 A. I don't know. I don't know what that is. 2 Q. All right. And obviously the sticker on the right 3 didn't play a role in your purchase of this computer, did 4 it? 5 A. No, it didn't play a role at the time. 6 Q. Handing you what's been marked as Exhibit 6, and I 7 just would like you to confirm that that's a picture of the 8 computer with its case shut. 9 A. Yes, fingerprints and all. 10 MR. THOMAS: Good camera. 11 Q. (By Mr. Rummage) And handing you what's been 12 marked as Exhibit 7, that is a picture of the computer as 13 it looks with the case open, just seeing the keyboard and 14 the stickers, correct? 15 A. Uh-huh. That is a good camera. 16 Q. I wish I could say it were mine. 17 MR. RUMMAGE: I don't have anything further 18 except -- let's go off the record for a second. 19 (Off-the-record discussion.) 20 MR. SMART: We may have a question or two. 21 MR. THOMAS: Give us two minutes. We'll be right 22 back. 23 (A brief break was taken.) 24 MR. RUMMAGE: Before we get going, I was just 25 reminded that what I just said about the stipulation we</p>

DIANNE L. KELLEY 11/2/07

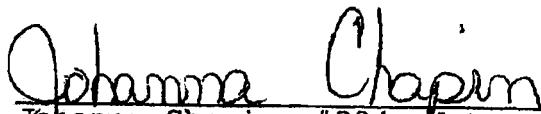
1 C E R T I F I C A T E
2

3 STATE OF WASHINGTON)
4 COUNTY OF KING)

5 I, the undersigned Certified Court Reporter and an
6 officer of the Court under my commission as a Notary Public
7 for the State of Washington, hereby certify that the
8 foregoing deposition upon oral examination of DIANNE L.
9 KELLEY was taken before me on November 2, 2007, and
10 transcribed under my direction;

11 That the witness was duly sworn by me to testify
12 truthfully; that the transcript of the deposition is a
13 full, true, and correct transcript to the best of my
14 ability; that I am neither attorney for, nor a relative or
15 employee of, any of the parties to the action or any
16 attorney or counsel employed by the parties hereto, nor
17 financially interested in its outcome.

18 IN WITNESS WHEREOF, I have hereunto set my hand and
19 seal this 5th day of November, 2007.
20
21

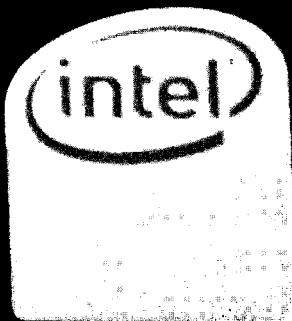
22 
23

24 Johanna Chapin, #334, Notary Public
25 in and for the State of Washington
residing at Seattle, Washington.











DELL

